IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8082 OF 2006

Narhari Gopinath Bagde. .. Petitioner.

vs.

Ganesh Patwardhan

& Anr. . .. Respondents.

Mr. R.G. Jagtap for petitioner.

CORAM : A.P. DESHPANDE, J.

DATE : 11th December, 2006.

P.C.

. This petition is filed by an obstructionist to a decree for possession obtained by the respondent no. 1. The respondent no. 1 instituted a suit in the year 1986 against the respondent no. 2 who is real brother of the present petitioner. The respondent no. 1/plaintiff on establishing his title to the property obtained a decree for removal of encroachment and possession. The respondent no. 2 preferred an appeal against the judgment and decree passed by the Civil Judge, Junior Division, Mahad and the appellate court dismissed the appeal concurring with the view taken by the trial Court. When the decree was sought to be executed against

respondent no. 2 herein, the present petitioner moved an application under Order 21 Rule 101 of the CPC. The grievance of the petitioner obstructionist is that without impleading him as a party defendant the decree has been obtained which is wholly impermissible in law. The trial Court permitted parties to lead evidence in support of their respective cases and the obstructionist/petitioner examined witnesses to substantiate his case. The trial Court on examination of the record found that the petitioner's brother's name alone is entered in chalata no. 34-1 and 34-2 as an encroacher whereas the name of respondent no. 1 is entered as a owner since the year 1988 onwards. Petitioner's name does not appear in the City Survey records even as an encroacher. The said finding has been reached by the trial Court on appreciation of evidence on record. A further finding has been recorded that since the last more than 30-35 years, the petitioner is not staying in the village wherein the suit property is situated. The trial Court has observed thus :-

> "But after considering Cross Examination, it is seen that since last about 30-35 years, the Obstructionist is not residing at Village Birwadi but he is residing at Goregaon. Further, since last 30-35 years he has ben exercising his right to vote at

> Goregaon. He does not have Ration Card at the address of Birwadi. Such evidence is given by Talathi of Birwadi vide Exh. 82. From his evidence it is proved that the Obstructionist is not residing at Birwadi."

If this be the position that the petitioner is not residing at Birwadi for the last 30-35 years, obviously the obstruction is caused in the execution of the decree by the petitioner at the behest of respondent no. 2, his brother.

2. I have perused the order passed by the executing court. No interference is called for. In the result, the writ petition is summarily dismissed.

(A.P. Deshpande, J.)